

STATE OF COLORADO
OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE
Grant Agreement
with

TABLE OF CONTENTS

1. PARTIES	1
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.	1
3. RECITALS	1
4. DEFINITIONS	2
5. TERM and EARLY TERMINATION.	3
6. STATEMENT OF WORK	3
7. PAYMENTS TO GRANTEE	4
8. REPORTING - NOTIFICATION	5
9. GRANTEE RECORDS	5
10. CONFIDENTIAL INFORMATION-STATE RECORDS	6
11. CONFLICTS OF INTEREST	7
12. REPRESENTATIONS AND WARRANTIES	7
13. INSURANCE.....	7
14. BREACH.....	9
15. REMEDIES.....	9
16. NOTICES and REPRESENTATIVES	11
17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.....	11
18. GOVERNMENTAL IMMUNITY.....	12
19. STATEWIDE GRANT MANAGEMENT SYSTEM	12
20. GENERAL PROVISIONS	12
21. COLORADO SPECIAL PROVISIONS	15
22. SIGNATURE PAGE	17
23. EXHIBIT A – STATEMENT OF WORK	i
24. EXHIBIT B - OPTION LETTER	i

1. PARTIES

This Grant Agreement (hereinafter called “Grant”) is entered into by and between _____ (hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Colorado Office of Economic Development and International Trade (hereinafter called the “State” or “OEDIT”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority to enter into this Early Stage Company Grant exists in CRS §24-48.5-101, et seq., and funds have been budgeted, appropriated and otherwise made available pursuant to the Bioscience Discovery Evaluation Grant Program and Bioscience Discovery Evaluation Cash Fund, and a sufficient unencumbered balance

thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The purpose of the Bioscience Discovery Evaluation Grant Program is to create new bioscience companies and additional primary jobs in Colorado via the development of products and services from research discoveries that originate in Colorado Research Institutions. The technologies underlying the Work are bioscience based.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in this Grant and **Exhibit A**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work) and **Exhibit B** (Option Letter).

D. Goods

“Goods” means tangible material.

E. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

F. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

G. Intellectual Property

“Intellectual Property” includes the Inventions, Know-How, software, technical information, data, trade secrets, processes, technology, and designs that the Grantee conceived, made, or first reduced to practice as a result of the performance of Work under this Grant.

H. Intellectual Property Rights

“Intellectual Property Rights” means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world for the Intellectual Property: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trade secret rights; (c) patent and industrial property rights; (d) trademark and trade name rights and similar rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

I. Inventions

“Invention(s)” means individually and collectively any invention, improvements or discoveries, whether or not patentable, that the Grantee conceived, made, or first reduced to practice in the performance of Work under this Grant.

J. Know-How

“Know-How” means original works of authorship in an intangible medium, or fixed in a tangible medium of expression by the Grantee which is related to the Work and the Work Product or to the use of, or desirable for the practice of, the Inventions, and which the Grantee conceived, made, or first reduced to practice in the performance of Work under this Grant.

K. OEDIT Designee

“OEDIT Designee” means the entity designated by OEDIT to manage the Intellectual Property on behalf of the State and which (i) has a license agreement with Grantee pursuant to CRS §24-48.5-101, et seq., and (ii) has entered a separate agreement with OEDIT for the management of the Intellectual Property.

L. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

M. Program

“Program” means the Bioscience Discovery Evaluation Grant Program that provides the funding for this Grant.

N. Research Institution

“Research Institution” means a public or private, non-profit institution of higher education, a non-profit teaching hospital, or a private, non-profit medical and research center located and operating in Colorado.

O. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in this Grant and **Exhibit A**.

P. Subcontractor

“Subcontractor” means third-parties, if any, engaged by Grantee to aid in performance of Grantee’s obligations pursuant to this Grant who are not employees of Grantee. The term “Subcontractor” shall not include vendors of Goods that are incidental to Grantee’s performance of its obligations pursuant to this Grant.

Q. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A**.

R. Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, (i) Intellectual Property or, (ii) software, research, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type developed during the term of the Grant. Work Product shall not include any Annual or Final Reports.

5. TERM and EARLY TERMINATION.

A. Initial Term-Work Commencement

The Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on _____ unless sooner terminated or further extended as specified elsewhere herein.

B. State’s Option to Extend

The State may require continued performance for a period of one year at the same rates and same terms specified in the Grant. If the State exercises this option, it shall provide written notice to Grantee at least 30 days prior to the end of the current Grant term in form substantially equivalent to **Exhibit B**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant. The total duration of this Grant, including the exercise of any options under this clause, shall not exceed 3 years.

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** on or before _____. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Employees

All persons employed by Grantee or any of its Subcontractors shall be considered Grantee's or its Subcontractors' employee(s), as applicable, for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount and Matching Funds

The maximum amount of Grant Funds payable under this Grant to Grantee by the State is \$, as determined by the State from available Grant Funds. Payments to Grantee are limited to the unpaid obligated balance of the Grant Funds as set forth in §7 and **Exhibit A**. Grantee shall provide matching funds in an amount which shall not be less than the Grant Funds identified in §7.A. and as provided in **Exhibit A** ("Matching Funds"). The State shall disburse to Grantee, and Grantee shall receive from State, Grant Funds only in an amount equal to the amount provided by Grantee as Matching Funds and in no event shall the Grant Funds provided by the State exceed the amount identified as Grant Funds in this §7A. Grantee shall provide evidence of such Matching Funds to the State, and the State shall determine, in its sole discretion, the adequacy and availability of such Matching Funds for use pursuant to this Grant. The State may terminate this Grant in the event Grantee is unable to secure or provide such Matching Funds on the Effective Date or thereafter, or if the State has reasonable grounds to believe Grantee will be unable to secure or provide such Matching Funds.

i. Type of Grant—Payment

a) Proof of Concept Grant

If this Grant is a Proof of Concept Grant, as indicated in §3.A., above, the State shall advance to Grantee a maximum of 95% of the Grant Funds indicated in §7.A., subject to the requirement that Grantee provide Matching Funds, as an advance payment at the State's sole discretion. Any advance payment provided for pursuant to this Grant shall comply with State Fiscal Rules, be made in accordance with the provisions of this Grant, and be made only if a Fiscal Rule waiver has been granted by the Colorado State Controller for such advance payment. Upon completion of Grantee's obligations pursuant to this Grant, and acceptance by the State, in the State's sole discretion, of such obligations, the State shall pay Grantee the remaining 5% of available Grant Funds.

b) Early Stage Company Grant

If this Grant is an Early State Company Grant, as indicated in §3.A., above, the State shall reimburse Grantee for allowable expenditures in a maximum amount of 95% of Grant Funds, subject to the requirement that Grantee provide Matching Funds, except that the State shall withhold 5% of Grant Funds until final acceptance by the State of Grantee's Work, in the State's sole discretion. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth herein and approved by the State. Upon completion of Grantee's obligations pursuant to this Grant, and acceptance by the State, in the State's sole discretion, the State shall pay Grantee the remaining 5% of available Grant funds.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds -Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are

used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants, or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State. The State shall provide notice to Grantee in the event the State withholds funds pursuant to this section.

B. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget. Grantee may adjust budgeted line item expenditure amounts up to 10% of the total Budget without approval of the State, except that in no event shall Indirect Costs, as indicated in **Exhibit A**, exceed 8% of Total Direct Costs.

Adjustments in excess of 10% shall be authorized by the State in an amendment to this Grant. The State's total consideration shall not exceed the maximum amount shown herein.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

Grantee shall submit an Annual Report to the State on or before March 15 of each year of this Grant, and shall submit to the State a Final Report not later than 30 days before the expiration or sooner termination of this Grant, which such Annual and Final Reports are further described in **Exhibit A**. Grantee shall also submit a report which shall contain an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder, pursuant to §19. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit A**.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of OEDIT.

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Subcontracts

Copies of any and all agreements with any Subcontractors entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all agreements with Subcontractors entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such agreements be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following:

A. Maintenance

A complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work (including, but not limited to the operation of programs) hereunder. Grantee shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Grant is completed or terminated, or (ii) final payment

is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State, the federal government (if applicable) and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee also shall permit the State, the federal government (if applicable), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and shall comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Subcontractors, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure -Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability

and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees pursuant to this **§10**.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantees Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Work under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Grant. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the State.

A. Public Entities

If Grantee or Subcontractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain, and shall require any Subcontractor to maintain, at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require any agreement with Subcontractors that are public entities providing Work hereunder, to include the insurance requirements necessary to meet Subcontractor's liabilities under the GIA.

B. Non-Public Entities

If Grantee or Subcontractor is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain, and shall require any Subcontractor to obtain and maintain, during the term of this Grant insurance coverage and policies meeting the same requirements set forth in **§13(C)**.

C. Grantee and any Subcontractors

Grantee shall obtain, and shall require any Subcontractors, other than those that are public entities, to obtain insurance with provisions substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Subcontractors employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, Subcontractors, products and completed operations, blanket Contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire.

iii. Professional Liability

The Grantee promises and agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$1,000,000 that provides coverage for Work undertaken pursuant to this Grant. The policy, including claims made forms, shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the Work under this Grant.

iv. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

v. Additional Insured

Grantee and the State shall be named as additional insured on the Commercial General Liability Insurance policy (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

vi. Primacy of Coverage

Coverage required of Grantee and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vii. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Grantee, and Grantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Grantee's receipt of such notice.

viii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

D. Certificates

Grantee if not subject to **§13.A.** above, shall, and shall require any Subcontractor to, provide certificates showing insurance coverage required hereunder to the State prior to the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee shall, and shall require any Subcontractor to, deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, Grantee shall, and shall require any Subcontractor to, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§16**. The Party notified of such breach shall have 30 days of receipt of written notice to cure such breach (the "Cure Period"). If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence the State may exercise any of the remedies set forth in **§15**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a Cure Period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, provided that a breach is not necessary under **§15(B)**, the State shall have all of the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Grant following the notice and Cure Period set forth in **§14(B)**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the Cure Period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations to the State or render further performance hereunder past the effective date of such notice. Grantee shall complete Work not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms, and shall complete and deliver any outstanding Annual and Final Reports. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. Notwithstanding the foregoing, Grantee may continue to perform tasks and activities as described herein, including through the use of Subcontractors; provided that (a) State shall have no obligation to reimburse Grantee (or its Subcontractors) for such if performed after the termination date, except as otherwise agreed to by the parties and (b) Grantee shall notify all Subcontractors that the Grant is terminated and the State will no longer be providing funding for the Work.

ii. Payments

If this Grant is an Early Stage Company Grant, as indicated in **§ 3.A.**, and this Grant is terminated as provided herein, the State shall reimburse Grantee for the State's share of out-of pocket expenditures made before the date of termination, which are directly attributable to the uncompleted portion of Grantee's obligations hereunder less the amount of Matching Funds provided that the sum of any and all reimbursement shall not exceed the maximum amount of Grant Funds payable to Grantee hereunder; that such expenses are approved as indicated herein and in **Exhibit A**. The State shall retain all other Grant Funds.

If this Grant is a Proof of Concept Grant, as indicated in **§3.A.**, and this Grant is terminated as provided herein, the Grantee shall repay all Grant Funds to the State advanced to Grantee by State less the State's share of any out-of-pocket expenditures made before the date of termination, which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that such expenses are approved as indicated herein and in **Exhibit A**. Such Grant Funds shall be returned along with any interest earned on these Grant Funds.

If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders.

B. Grantee and the State's Right to Terminate for Non-Viability

Grantee and the State may mutually agree to terminate Grantee's performance hereunder at any time the Parties mutually determine in writing that the Work Product will not be feasible nor commercially viable based on results obtained. Upon such termination, Grantee shall cease its performance hereunder and provide prompt written notice to OEDIT. In the event the Parties mutually terminate this Grant pursuant to this Section, Grantee shall provide to the State any outstanding reports, including Annual and Final Reports, and financial documentation as required herein, and the State may withhold Grant Funds, or Grantee shall refund Grant Funds to the State, as provided in **§15.A.ii**.

C. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by **§14(A)** or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

iii. Payments

If this Grant is terminated by the State pursuant to this **§15(B)**, the State shall:

- a)** if this is an Early Stage Company Grant, as indicated in **§3.A.**, reimburse Grantee for the State's share of a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder, and provided that such expenses are approved as indicated herein and in **Exhibit A**; or
- b)** if this is a Proof of Concept Grant, as indicated in **§3.A.**, Grantee shall repay to the State all Grant Funds advanced to Grantee less the State's share of any out-of-pocket expenditures made before the date of termination, which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that such expenses are approved as indicated herein and in **Exhibit A**. Such Grant Funds shall be returned along with any interest earned on these Grant Funds.

D. Remedies Not Involving Termination

The State, in its sole discretion, may, after the Cure Period, exercise one or more of the following remedies in addition to other remedies available to it, and shall provide Grantee notice of such exercise:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal from the Work of any of Grantee's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Demand Repayment

If this is a Proof of Concept Grant, as indicated in **§3.A.**, State may demand Grantee repay to the State all Grant Funds advanced to Grantee by State which are directly attributable to any uncompleted portion of Grantee's obligations hereunder.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Sonya Guram, Manager Bioscience Programs
Colorado Office of Economic Development and International Trade
1625 Broadway, Suite 2700
Denver, CO 80202
sonya.guram@state.co.us

B. Grantee:

Name & Title
Grantee
Street Address
City, CO Zip +
e-mail

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

All Work Product of any type, including drafts, but not including any Annual and Final Reports, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of Grantee. The parties agree that all Intellectual Property Rights in and to the Work Product shall be exclusively owned by Grantee.

Grantee hereby grants the State a limited, non-exclusive, non-transferable beyond the State except to OEDIT Designees, worldwide, paid up, royalty-free, perpetual license, without the right to sublicense, to use the Work Product for the State's or OEDIT Designee's own internal non-commercial purposes only, and for no other purpose, including without limitation any commercial purpose. All rights in and to the Work Product not expressly granted to State in this Grant are reserved by Grantee. The parties agree that the State shall own any and all Annual and Final Reports; provided that, except for the license described in this section, nothing herein shall grant the State any additional rights in or to the Work Product (including any data or results) set forth in such Annual or Final Reports. The parties further agree that all Intellectual Property contained in any and all Annual and Final Reports shall be the exclusive property of Grantee.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended. In no event shall the State be liable to Grantee for any lost profits or business opportunities, loss of use, business interruption, loss of data, or any other indirect, special, incidental, or consequential damages under any theory of liability, whether based in contract, tort, negligence, product liability, or otherwise.

19. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Grant Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the OEDIT, and showing of good cause, may remove the name of the Grantee from the Grant Management System and prohibit Grantee from bidding on future State Grants or Contracts. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and Subcontracts

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State, except for the Approved Subcontractors named

in **Exhibit A**. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. Any and all assignments and subcontracts shall be subject to all of the terms and conditions of this Contract. Grantee shall be solely responsible for all aspects of Subcontractor arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications hereof shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions ,
- ii.** The provisions of the main body of this Grant,
- iii.** **Exhibit A,**
- iv.** **Exhibit B.**

J. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

K. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

M. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. Confidentiality of Grantee Records

Except as otherwise provided herein, or except as otherwise required by law or court order, as determined by the State in the State's reasonable discretion, the State shall hold in strict confidence and shall not disclose to third parties and shall deny third parties the right to inspect or discover Grantee's records in the possession of the State which are related to this Grant and clearly identified by Grantee as confidential.

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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21. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Grants except where noted in italics.

A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 4. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. 5. COMPLIANCE WITH LAW.

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G. 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. 9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. 11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a contract with a Subcontractor that fails to certify to Grantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subcontractor and the contracting State agency within three days if Grantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

L. 12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

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22. SIGNATURE PAGE

Grant Routing Number _____

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;">GRANTEE</p> <p>By: _____ Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">John W. Hickenlooper, GOVERNOR</p> <p style="text-align: center;">Colorado Office of Economic Development and International Trade Ken Lund, Executive Director</p> <p>_____</p> <p style="text-align: center;">By:</p> <p>Date: _____</p>
<p style="text-align: center;">2nd Grantee Signature if Needed</p> <p>By: INSERT -Name of Authorized Individual Title: INSERT -Official Title of Authorized Individual</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW</p> <p style="text-align: center;">John W. Suthers, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

<p style="text-align: center;">STATE CONTROLLER</p> <p style="text-align: center;">David J. McDermott, CPA</p> <p>By: _____</p> <p style="text-align: center;">By: Kyle McDonald, Controller</p> <p>Date: _____</p>

23. EXHIBIT A – STATEMENT OF WORK

STATE OF COLORADO
OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE
with
Grantee

1. GENERAL DESCRIPTION

2. DEFINITIONS

2.1. "BDEGP" means Bioscience Discovery Evaluation Grant Program.

2.2.

2.3.

2.4.

3. GRANTEE'S OBLIGATIONS

Grantee's Work activities under this Grant shall include:

3.1. :

3.1.1. ,

3.1.2. ,

3.1.3. .

3.2. .

3.3. .

3.4. .

4. PERSONNEL

4.1. Responsible Administrator

Grantee's performance hereunder shall be under the supervision of _____, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this Grant.

4.2. Other Key Personnel

4.2.1. Key Personnel

The following people are Key Personnel for purposes of this Grant, and shall be replaced only in accordance with § 4.3 of this Exhibit A:

4.2.2. Approved Subcontractors

The following people or entities are the only Approved Subcontractors for purposes of this Grant:

4.2.3. Grantee may add or delete Approved Subcontractors only with the State's prior, written approval, pursuant to § 20.A. of the Grant and § 4.3 of this Exhibit A.

4.3. Replacement

Grantee shall immediately notify the State if any Key Personnel cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its Key Personnel, it shall notify the State and seek its approval. Such approval is at the State's sole discretion, as the State issued this Grant in reliance on Grantee's representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what the proposed

replacement's qualifications are, and when the change would take effect. If at any time Key Personnel cease to serve, the State, in its sole discretion, may direct Grantee to suspend performance of the Work until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with the Notices and Representatives provisions of this Grant.

5. ACCEPTANCE CRITERIA

5.1. Annual and Final Report(s)

Grantee shall be responsible for completing the Work, and shall provide to the State's Representative the following:

5.1.1. Grantee shall provide Annual and Final reports using a format required and provided by the State and as described herein.

5.1.2. The Annual Report shall contain information about Grantee's Work including:

5.1.2.1. progress on Grantee's Obligations outlined in § 3 of this **Exhibit A**.

5.1.2.2. use of Grant and Matching Funds according to the Grant and the Work Budget in § 7 of this **Exhibit A**.

5.1.2.3. If applicable:

5.1.2.3.1. follow-on capital raised,

5.1.2.3.2. new intellectual property developed,

5.1.2.3.3. company created,

5.1.2.3.4. jobs created,

5.1.2.3.5. licenses issued, and

5.1.2.3.6. other commercial progress.

5.1.3. The Final Report shall contain reporting on the same criteria and categories of information as that required for the Annual Report, as identified at § 5.1.2 of this **Exhibit A**. The Final Report shall also contain:

5.1.3.1. an analysis of the results and finding from the Work,

5.1.3.2. an analysis of technical difficulties, errors, and planned or recommended next steps, and

5.1.3.3. supporting documentation, which shall include documentation which verifies all Work expenditures approved in the Work Budget.

5.1.4. The Annual and Final Reports shall be delivered to the State in accordance with §8.A of the Grant. The State may withhold payment(s) if the Annual and Final Reports are not submitted in accordance with in §8.A. of the Grant.

5.1.5. Financial documents including receipts, timesheets, etc. shall be available for monitoring this Grant within ten (10) days of request by the State.

5.1.6. If this Grant is a Proof of Concept Grant, Grantee shall include the requirements of §5.3. of this **Exhibit A** in the Annual and Final Report, as applicable.

5.2. Additional Reporting

Grantee shall cooperate with the State in promptly supplying any additional information or data to the State that is necessary to fulfill OEDIT's obligations under CRS § 24-48.5-101, et seq, to report to committees of the House and the Senate as needed during the term of this Agreement.

5.3. Educational Reporting

For Proof of Concept Grants, Grantee shall present the results of the Work, including specific information about the bioscience research project at least once during the Work period to elementary and secondary school science teachers employed in the geographic region in which the technology is being developed. The State's Representative shall be notified in advance of this presentation, and a report on such presentation shall be included in the Annual or Final Report, whichever is first prepared following completion of the presentation.

6. ADMINISTRATIVE REQUIREMENTS

6.1. Accounting

6.1.1. At all times from the Effective Date of this Grant until completion of the Work, Grantee shall maintain properly segregated books of State Grant Funds, Matching Funds, and

other funds associated with the Work.

6.1.2. All receipts and expenditures associated with said Work shall be documented in a detailed and specific manner, and shall accord with the Work Budget set forth herein.

6.2. Monitoring

The State may monitor the Work on an as-needed basis. The State may choose to audit Grantee's activities performed under this Agreement. Such audit may be requested by OEDIT via electronic media, and all documentation shall be made available for audit by OEDIT within 30 days of such request. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to this Grant. Such books and records shall contain documentation of the participant's pertinent activity under this Grant in a form consistent with good accounting practice.

7. WORK BUDGET

7.1. Matching Funds

Grantee has secured at least an equal amount of funds, Matching Funds, to support the commercial advancement of this project. The providers of Matching Funds are:

7.2. BDEGP Grant Funds

<u>Line Item</u>	BDEGP	Match	TOTAL
Manufacturing			
IND Application - Preparation & Filing			
Business Plan			
TOTAL			

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24. EXHIBIT B - OPTION LETTER

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
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1) OPTIONS:

Option to extend only up to 1 year from the termination date specified in Section

2) REQUIRED PROVISIONS.

In accordance with Section 5 of the Original Grant routing number _____ between the State of Colorado, Office of Economic Development and International Trade, and Contractor's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at a cost/price specified in Section 7.

3) Effective Date. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Name of Agency or IHE

By: Insert Name & Title of Person Signing for Agency or IHE

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: _____

Insert Name of Agency or IHE Delegate - Please delete if contract will be routed to OSC for approval

Date: _____

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